

1 A bill to be entitled

2 An act relating to lawful testing for alcohol, chemical  
3 substances, or controlled substances; amending s.  
4 316.1932, F.S.; revising provisions to notify a person  
5 that refusal to submit to a lawful test of the person's  
6 breath, urine, or blood is a misdemeanor, to conform to  
7 changes made by the act; limiting information to be made  
8 available to a person tested to determine the amount of  
9 alcohol in the person's blood or breath or the presence of  
10 chemical substances or controlled substances; amending s.  
11 316.1939, F.S.; removing prior suspension as a condition  
12 for the commission of a misdemeanor by refusal to submit  
13 to a lawful test of breath, urine, or blood; providing  
14 penalties for refusal to submit to testing; amending s.  
15 327.352, F.S.; revising provisions to notify a person that  
16 refusal to submit to a lawful test of the person's breath,  
17 urine, or blood is a misdemeanor, to conform to changes  
18 made by the act; limiting information to be made available  
19 to a person tested to determine the amount of alcohol in  
20 the person's blood or breath or the presence of chemical  
21 substances or controlled substances; amending s. 327.359,  
22 F.S.; removing prior suspension as a condition for the  
23 commission of a misdemeanor by refusal to submit to a  
24 lawful test of breath, urine, or blood; providing  
25 penalties for refusal to submit to testing; providing an  
26 effective date.

27

28 | Be It Enacted by the Legislature of the State of Florida:  
29 |

30 |       Section 1. Paragraphs (a), (c), and (f) of subsection (1)  
31 | of section 316.1932, Florida Statutes, are amended to read:

32 |       316.1932 Tests for alcohol, chemical substances, or  
33 | controlled substances; implied consent; refusal.--

34 |       (1)(a)1.a. Any person who accepts the privilege extended  
35 | by the laws of this state of operating a motor vehicle within  
36 | this state is, by so operating such vehicle, deemed to have  
37 | given his or her consent to submit to an approved chemical test  
38 | or physical test including, but not limited to, an infrared  
39 | light test of his or her breath for the purpose of determining  
40 | the alcoholic content of his or her blood or breath if the  
41 | person is lawfully arrested for any offense allegedly committed  
42 | while the person was driving or was in actual physical control  
43 | of a motor vehicle while under the influence of alcoholic  
44 | beverages. The chemical or physical breath test must be  
45 | incidental to a lawful arrest and administered at the request of  
46 | a law enforcement officer who has reasonable cause to believe  
47 | such person was driving or was in actual physical control of the  
48 | motor vehicle within this state while under the influence of  
49 | alcoholic beverages. The administration of a breath test does  
50 | not preclude the administration of another type of test. The  
51 | person shall be told that his or her failure to submit to any  
52 | lawful test of his or her breath will result in the suspension  
53 | of the person's privilege to operate a motor vehicle for a  
54 | period of 1 year for a first refusal, or for a period of 18

55 months if the driving privilege of such person has been  
56 previously suspended as a result of a refusal to submit to such  
57 a test or tests, and shall also be told that if he or she  
58 refuses to submit to a lawful test of his or her breath ~~and his~~  
59 ~~or her driving privilege has been previously suspended for a~~  
60 ~~prior refusal to submit to a lawful test of his or her breath,~~  
61 ~~urine, or blood,~~ he or she commits a misdemeanor in addition to  
62 any other penalties. The refusal to submit to a chemical or  
63 physical breath test upon the request of a law enforcement  
64 officer as provided in this section is admissible into evidence  
65 in any criminal proceeding.

66 b. Any person who accepts the privilege extended by the  
67 laws of this state of operating a motor vehicle within this  
68 state is, by so operating such vehicle, deemed to have given his  
69 or her consent to submit to a urine test for the purpose of  
70 detecting the presence of chemical substances as set forth in s.  
71 877.111 or controlled substances if the person is lawfully  
72 arrested for any offense allegedly committed while the person  
73 was driving or was in actual physical control of a motor vehicle  
74 while under the influence of chemical substances or controlled  
75 substances. The urine test must be incidental to a lawful arrest  
76 and administered at a detention facility or any other facility,  
77 mobile or otherwise, which is equipped to administer such tests  
78 at the request of a law enforcement officer who has reasonable  
79 cause to believe such person was driving or was in actual  
80 physical control of a motor vehicle within this state while  
81 under the influence of chemical substances or controlled

82 substances. The urine test shall be administered at a detention  
83 facility or any other facility, mobile or otherwise, which is  
84 equipped to administer such test in a reasonable manner that  
85 will ensure the accuracy of the specimen and maintain the  
86 privacy of the individual involved. The administration of a  
87 urine test does not preclude the administration of another type  
88 of test. The person shall be told that his or her failure to  
89 submit to any lawful test of his or her urine will result in the  
90 suspension of the person's privilege to operate a motor vehicle  
91 for a period of 1 year for the first refusal, or for a period of  
92 18 months if the driving privilege of such person has been  
93 previously suspended as a result of a refusal to submit to such  
94 a test or tests, and shall also be told that if he or she  
95 refuses to submit to a lawful test of his or her urine ~~and his~~  
96 ~~or her driving privilege has been previously suspended for a~~  
97 ~~prior refusal to submit to a lawful test of his or her breath,~~  
98 ~~urine, or blood,~~ he or she commits a misdemeanor in addition to  
99 any other penalties. The refusal to submit to a urine test upon  
100 the request of a law enforcement officer as provided in this  
101 section is admissible into evidence in any criminal proceeding.

102 2. The Alcohol Testing Program within the Department of  
103 Law Enforcement is responsible for the regulation of the  
104 operation, inspection, and registration of breath test  
105 instruments utilized under the driving and boating under the  
106 influence provisions and related provisions located in this  
107 chapter and chapters 322 and 327. The program is responsible for  
108 the regulation of the individuals who operate, inspect, and

109 | instruct on the breath test instruments utilized in the driving  
110 | and boating under the influence provisions and related  
111 | provisions located in this chapter and chapters 322 and 327. The  
112 | program is further responsible for the regulation of blood  
113 | analysts who conduct blood testing to be utilized under the  
114 | driving and boating under the influence provisions and related  
115 | provisions located in this chapter and chapters 322 and 327. The  
116 | program shall:

117 |       a. Establish uniform criteria for the issuance of permits  
118 | to breath test operators, agency inspectors, instructors, blood  
119 | analysts, and instruments.

120 |       b. Have the authority to permit breath test operators,  
121 | agency inspectors, instructors, blood analysts, and instruments.

122 |       c. Have the authority to discipline and suspend, revoke,  
123 | or renew the permits of breath test operators, agency  
124 | inspectors, instructors, blood analysts, and instruments.

125 |       d. Establish uniform requirements for instruction and  
126 | curricula for the operation and inspection of approved  
127 | instruments.

128 |       e. Have the authority to specify one approved curriculum  
129 | for the operation and inspection of approved instruments.

130 |       f. Establish a procedure for the approval of breath test  
131 | operator and agency inspector classes.

132 |       g. Have the authority to approve or disapprove breath test  
133 | instruments and accompanying paraphernalia for use pursuant to  
134 | the driving and boating under the influence provisions and

135 related provisions located in this chapter and chapters 322 and  
136 327.

137 h. With the approval of the executive director of the  
138 Department of Law Enforcement, make and enter into contracts and  
139 agreements with other agencies, organizations, associations,  
140 corporations, individuals, or federal agencies as are necessary,  
141 expedient, or incidental to the performance of duties.

142 i. Issue final orders which include findings of fact and  
143 conclusions of law and which constitute final agency action for  
144 the purpose of chapter 120.

145 j. Enforce compliance with the provisions of this section  
146 through civil or administrative proceedings.

147 k. Make recommendations concerning any matter within the  
148 purview of this section, this chapter, chapter 322, or chapter  
149 327.

150 l. Promulgate rules for the administration and  
151 implementation of this section, including definitions of terms.

152 m. Consult and cooperate with other entities for the  
153 purpose of implementing the mandates of this section.

154 n. Have the authority to approve the type of blood test  
155 utilized under the driving and boating under the influence  
156 provisions and related provisions located in this chapter and  
157 chapters 322 and 327.

158 o. Have the authority to specify techniques and methods  
159 for breath alcohol testing and blood testing utilized under the  
160 driving and boating under the influence provisions and related  
161 provisions located in this chapter and chapters 322 and 327.

162 p. Have the authority to approve repair facilities for the  
163 approved breath test instruments, including the authority to set  
164 criteria for approval.  
165

166 Nothing in this section shall be construed to supersede  
167 provisions in this chapter and chapters 322 and 327. The  
168 specifications in this section are derived from the power and  
169 authority previously and currently possessed by the Department  
170 of Law Enforcement and are enumerated to conform with the  
171 mandates of chapter 99-379, Laws of Florida.

172 (c) Any person who accepts the privilege extended by the  
173 laws of this state of operating a motor vehicle within this  
174 state is, by operating such vehicle, deemed to have given his or  
175 her consent to submit to an approved blood test for the purpose  
176 of determining the alcoholic content of the blood or a blood  
177 test for the purpose of determining the presence of chemical  
178 substances or controlled substances as provided in this section  
179 if there is reasonable cause to believe the person was driving  
180 or in actual physical control of a motor vehicle while under the  
181 influence of alcoholic beverages or chemical or controlled  
182 substances and the person appears for treatment at a hospital,  
183 clinic, or other medical facility and the administration of a  
184 breath or urine test is impractical or impossible. As used in  
185 this paragraph, the term "other medical facility" includes an  
186 ambulance or other medical emergency vehicle. The blood test  
187 shall be performed in a reasonable manner. Any person who is  
188 incapable of refusal by reason of unconsciousness or other

189 mental or physical condition is deemed not to have withdrawn his  
190 or her consent to such test. A blood test may be administered  
191 whether or not the person is told that his or her failure to  
192 submit to such a blood test will result in the suspension of the  
193 person's privilege to operate a motor vehicle upon the public  
194 highways of this state and that a refusal to submit to a lawful  
195 test of his or her blood, ~~if his or her driving privilege has~~  
196 ~~been previously suspended for refusal to submit to a lawful test~~  
197 ~~of his or her breath, urine, or blood,~~ is a misdemeanor. Any  
198 person who is capable of refusal shall be told that his or her  
199 failure to submit to such a blood test will result in the  
200 suspension of the person's privilege to operate a motor vehicle  
201 for a period of 1 year for a first refusal, or for a period of  
202 18 months if the driving privilege of the person has been  
203 suspended previously as a result of a refusal to submit to such  
204 a test or tests, and that a refusal to submit to a lawful test  
205 of his or her blood, ~~if his or her driving privilege has been~~  
206 ~~previously suspended for a prior refusal to submit to a lawful~~  
207 ~~test of his or her breath, urine, or blood,~~ is a misdemeanor.  
208 The refusal to submit to a blood test upon the request of a law  
209 enforcement officer is admissible in evidence in any criminal  
210 proceeding.

211 (f)1. The tests determining the weight of alcohol in the  
212 defendant's blood or breath shall be administered at the request  
213 of a law enforcement officer substantially in accordance with  
214 rules of the Department of Law Enforcement. Such rules must  
215 specify precisely the test or tests that are approved by the



216 Department of Law Enforcement for reliability of result and ease  
217 of administration, and must provide an approved method of  
218 administration which must be followed in all such tests given  
219 under this section. However, the failure of a law enforcement  
220 officer to request the withdrawal of blood does not affect the  
221 admissibility of a test of blood withdrawn for medical purposes.

222 2.a. Only a physician, certified paramedic, registered  
223 nurse, licensed practical nurse, other personnel authorized by a  
224 hospital to draw blood, or duly licensed clinical laboratory  
225 director, supervisor, technologist, or technician, acting at the  
226 request of a law enforcement officer, may withdraw blood for the  
227 purpose of determining its alcoholic content or the presence of  
228 chemical substances or controlled substances therein. However,  
229 the failure of a law enforcement officer to request the  
230 withdrawal of blood does not affect the admissibility of a test  
231 of blood withdrawn for medical purposes.

232 b. Notwithstanding any provision of law pertaining to the  
233 confidentiality of hospital records or other medical records, if  
234 a health care provider, who is providing medical care in a  
235 health care facility to a person injured in a motor vehicle  
236 crash, becomes aware, as a result of any blood test performed in  
237 the course of that medical treatment, that the person's blood-  
238 alcohol level meets or exceeds the blood-alcohol level specified  
239 in s. 316.193(1)(b), the health care provider may notify any law  
240 enforcement officer or law enforcement agency. Any such notice  
241 must be given within a reasonable time after the health care  
242 provider receives the test result. Any such notice shall be used

243 only for the purpose of providing the law enforcement officer  
244 with reasonable cause to request the withdrawal of a blood  
245 sample pursuant to this section.

246 c. The notice shall consist only of the name of the person  
247 being treated, the name of the person who drew the blood, the  
248 blood-alcohol level indicated by the test, and the date and time  
249 of the administration of the test.

250 d. Nothing contained in s. 395.3025(4), s. 456.057, or any  
251 applicable practice act affects the authority to provide notice  
252 under this section, and the health care provider is not  
253 considered to have breached any duty owed to the person under s.  
254 395.3025(4), s. 456.057, or any applicable practice act by  
255 providing notice or failing to provide notice. It shall not be a  
256 breach of any ethical, moral, or legal duty for a health care  
257 provider to provide notice or fail to provide notice.

258 e. A civil, criminal, or administrative action may not be  
259 brought against any person or health care provider participating  
260 in good faith in the provision of notice or failure to provide  
261 notice as provided in this section. Any person or health care  
262 provider participating in the provision of notice or failure to  
263 provide notice as provided in this section shall be immune from  
264 any civil or criminal liability and from any professional  
265 disciplinary action with respect to the provision of notice or  
266 failure to provide notice under this section. Any such  
267 participant has the same immunity with respect to participating  
268 in any judicial proceedings resulting from the notice or failure  
269 to provide notice.

270           3. The person tested may, at his or her own expense, have  
271 a physician, registered nurse, other personnel authorized by a  
272 hospital to draw blood, or duly licensed clinical laboratory  
273 director, supervisor, technologist, or technician, or other  
274 person of his or her own choosing administer an independent test  
275 in addition to the test administered at the direction of the law  
276 enforcement officer for the purpose of determining the amount of  
277 alcohol in the person's blood or breath or the presence of  
278 chemical substances or controlled substances at the time  
279 alleged, as shown by chemical analysis of his or her blood or  
280 urine, or by chemical or physical test of his or her breath. The  
281 failure or inability to obtain an independent test by a person  
282 does not preclude the admissibility in evidence of the test  
283 taken at the direction of the law enforcement officer. The law  
284 enforcement officer shall not interfere with the person's  
285 opportunity to obtain the independent test and shall provide the  
286 person with timely telephone access to secure the test, but the  
287 burden is on the person to arrange and secure the test at the  
288 person's own expense.

289           4. Upon the request of the person tested, full information  
290 concerning the results of the test taken at the direction of the  
291 law enforcement officer shall be made available to the person or  
292 his or her attorney. Full information is limited to the  
293 following:

294           a. The type of test administered and the procedures  
295 followed.

296        b. The time of the collection of the blood or breath  
297 sample analyzed.

298        c. The numerical results of the test indicating the  
299 alcohol content of the blood and breath.

300        d. The type and status of any permit issued by the  
301 Department of Law Enforcement which was held by the person who  
302 performed the test.

303        e. If the test was administered by means of a breath  
304 testing instrument, the date of performance of the most recent  
305 required inspection of such instrument.

306  
307 Full information does not include manuals, schematics, or  
308 software of the instrument used to test the person or any other  
309 material that is not in the actual possession of the state.  
310 Additionally, full information does not include information in  
311 the possession of the manufacturer of the test instrument.

312        5. A hospital, clinical laboratory, medical clinic, or  
313 similar medical institution or physician, certified paramedic,  
314 registered nurse, licensed practical nurse, other personnel  
315 authorized by a hospital to draw blood, or duly licensed  
316 clinical laboratory director, supervisor, technologist, or  
317 technician, or other person assisting a law enforcement officer  
318 does not incur any civil or criminal liability as a result of  
319 the withdrawal or analysis of a blood or urine specimen, or the  
320 chemical or physical test of a person's breath pursuant to  
321 accepted medical standards when requested by a law enforcement

322 officer, regardless of whether or not the subject resisted  
323 administration of the test.

324 Section 2. Section 316.1939, Florida Statutes, is amended  
325 to read:

326 316.1939 Refusal to submit to testing; penalties.--

327 (1) Any person who has refused to submit to a chemical or  
328 physical test of his or her breath, blood, or urine, as  
329 described in s. 316.1932, ~~and whose driving privilege was~~  
330 ~~previously suspended for a prior refusal to submit to a lawful~~  
331 ~~test of his or her breath, urine, or blood,~~ and:

332 (a) Who the arresting law enforcement officer had probable  
333 cause to believe was driving or in actual physical control of a  
334 motor vehicle in this state while under the influence of  
335 alcoholic beverages, chemical substances, or controlled  
336 substances;

337 (b) Who was placed under lawful arrest for a violation of  
338 s. 316.193 unless such test was requested pursuant to s.  
339 316.1932(1)(c);

340 (c) Who was informed that, if he or she refused to submit  
341 to such test, his or her privilege to operate a motor vehicle  
342 would be suspended for a period of 1 year or, in the case of a  
343 second or subsequent refusal, for a period of 18 months;

344 (d) Who was informed that a refusal to submit to a lawful  
345 test of his or her breath, urine, or blood, ~~if his or her~~  
346 ~~driving privilege has been previously suspended for a prior~~  
347 ~~refusal to submit to a lawful test of his or her breath, urine,~~  
348 ~~or blood,~~ is a misdemeanor; and

349 (e) Who, after having been so informed, refused to submit  
350 to any such test when requested to do so by a law enforcement  
351 officer or correctional officer,  
352  
353 commits the offense of refusal to submit to testing. If such  
354 person's driving privilege was previously suspended for a prior  
355 refusal to submit to a lawful test of his or her breath, urine,  
356 or blood, such offense is a misdemeanor of the first degree,  
357 punishable and is subject to punishment as provided in s.  
358 775.082 or s. 775.083. If such person's driving privilege was  
359 not previously suspended for a prior refusal to submit to a  
360 lawful test of his or her breath, urine, or blood, such offense  
361 shall be punished by imprisonment for not more than 6 months and  
362 by a fine of up to \$500.

363 (2) The disposition of any administrative proceeding that  
364 relates to the suspension of a person's driving privilege does  
365 not affect a criminal action under this section.

366 (3) The disposition of a criminal action under this  
367 section does not affect any administrative proceeding that  
368 relates to the suspension of a person's driving privilege. The  
369 department's records showing that a person's license has been  
370 previously suspended for a prior refusal to submit to a lawful  
371 test of his or her breath, urine, or blood shall be admissible  
372 and shall create a rebuttable presumption of such suspension.

373 Section 3. Paragraphs (a), (c), and (e) of subsection (1)  
374 of section 327.352, Florida Statutes, are amended to read:

375           327.352 Tests for alcohol, chemical substances, or  
376 controlled substances; implied consent; refusal.--

377           (1) (a) 1. The Legislature declares that the operation of a  
378 vessel is a privilege that must be exercised in a reasonable  
379 manner. In order to protect the public health and safety, it is  
380 essential that a lawful and effective means of reducing the  
381 incidence of boating while impaired or intoxicated be  
382 established. Therefore, any person who accepts the privilege  
383 extended by the laws of this state of operating a vessel within  
384 this state is, by so operating such vessel, deemed to have given  
385 his or her consent to submit to an approved chemical test or  
386 physical test including, but not limited to, an infrared light  
387 test of his or her breath for the purpose of determining the  
388 alcoholic content of his or her blood or breath if the person is  
389 lawfully arrested for any offense allegedly committed while the  
390 person was operating a vessel while under the influence of  
391 alcoholic beverages. The chemical or physical breath test must  
392 be incidental to a lawful arrest and administered at the request  
393 of a law enforcement officer who has reasonable cause to believe  
394 such person was operating the vessel within this state while  
395 under the influence of alcoholic beverages. The administration  
396 of a breath test does not preclude the administration of another  
397 type of test. The person shall be told that his or her failure  
398 to submit to any lawful test of his or her breath will result in  
399 a civil penalty of \$500~~7~~ and shall also be told that if he or  
400 she refuses to submit to a lawful test of his or her breath ~~and~~  
401 ~~he or she has been previously fined for refusal to submit to any~~

402 ~~lawful test of his or her breath, urine, or blood,~~ he or she  
403 commits a misdemeanor in addition to any other penalties. The  
404 refusal to submit to a chemical or physical breath test upon the  
405 request of a law enforcement officer as provided in this section  
406 is admissible into evidence in any criminal proceeding.

407       2. Any person who accepts the privilege extended by the  
408 laws of this state of operating a vessel within this state is,  
409 by so operating such vessel, deemed to have given his or her  
410 consent to submit to a urine test for the purpose of detecting  
411 the presence of chemical substances as set forth in s. 877.111  
412 or controlled substances if the person is lawfully arrested for  
413 any offense allegedly committed while the person was operating a  
414 vessel while under the influence of chemical substances or  
415 controlled substances. The urine test must be incidental to a  
416 lawful arrest and administered at a detention facility or any  
417 other facility, mobile or otherwise, which is equipped to  
418 administer such tests at the request of a law enforcement  
419 officer who has reasonable cause to believe such person was  
420 operating a vessel within this state while under the influence  
421 of chemical substances or controlled substances. The urine test  
422 shall be administered at a detention facility or any other  
423 facility, mobile or otherwise, which is equipped to administer  
424 such test in a reasonable manner that will ensure the accuracy  
425 of the specimen and maintain the privacy of the individual  
426 involved. The administration of a urine test does not preclude  
427 the administration of another type of test. The person shall be  
428 told that his or her failure to submit to any lawful test of his



429 or her urine will result in a civil penalty of \$500~~7~~ and shall  
430 also be told that if he or she refuses to submit to a lawful  
431 test of his or her urine ~~and he or she has been previously fined~~  
432 ~~for refusal to submit to any lawful test of his or her breath,~~  
433 ~~urine, or blood,~~ he or she commits a misdemeanor in addition to  
434 any other penalties. The refusal to submit to a urine test upon  
435 the request of a law enforcement officer as provided in this  
436 section is admissible into evidence in any criminal proceeding.

437 (c) Any person who accepts the privilege extended by the  
438 laws of this state of operating a vessel within this state is,  
439 by operating such vessel, deemed to have given his or her  
440 consent to submit to an approved blood test for the purpose of  
441 determining the alcoholic content of the blood or a blood test  
442 for the purpose of determining the presence of chemical  
443 substances or controlled substances as provided in this section  
444 if there is reasonable cause to believe the person was operating  
445 a vessel while under the influence of alcoholic beverages or  
446 chemical or controlled substances and the person appears for  
447 treatment at a hospital, clinic, or other medical facility and  
448 the administration of a breath or urine test is impractical or  
449 impossible. As used in this paragraph, the term "other medical  
450 facility" includes an ambulance or other medical emergency  
451 vehicle. The blood test shall be performed in a reasonable  
452 manner. Any person who is incapable of refusal by reason of  
453 unconsciousness or other mental or physical condition is deemed  
454 not to have withdrawn his or her consent to such test. Any  
455 person who is capable of refusal shall be told that his or her

456 failure to submit to such a blood test will result in a civil  
457 penalty of \$500 and that a refusal to submit to a lawful test of  
458 his or her blood, ~~if he or she has previously been fined for~~  
459 ~~refusal to submit to any lawful test of his or her breath,~~  
460 ~~urine, or blood,~~ is a misdemeanor. The refusal to submit to a  
461 blood test upon the request of a law enforcement officer shall  
462 be admissible in evidence in any criminal proceeding.

463 (e)1. The tests determining the weight of alcohol in the  
464 defendant's blood or breath shall be administered at the request  
465 of a law enforcement officer substantially in accordance with  
466 rules of the Department of Law Enforcement. However, the failure  
467 of a law enforcement officer to request the withdrawal of blood  
468 does not affect the admissibility of a test of blood withdrawn  
469 for medical purposes.

470 2. Only a physician, certified paramedic, registered  
471 nurse, licensed practical nurse, other personnel authorized by a  
472 hospital to draw blood, or duly licensed clinical laboratory  
473 director, supervisor, technologist, or technician, acting at the  
474 request of a law enforcement officer, may withdraw blood for the  
475 purpose of determining its alcoholic content or the presence of  
476 chemical substances or controlled substances therein. However,  
477 the failure of a law enforcement officer to request the  
478 withdrawal of blood does not affect the admissibility of a test  
479 of blood withdrawn for medical purposes.

480 3. The person tested may, at his or her own expense, have  
481 a physician, registered nurse, other personnel authorized by a  
482 hospital to draw blood, or duly licensed clinical laboratory

483 director, supervisor, technologist, or technician, or other  
484 person of his or her own choosing administer an independent test  
485 in addition to the test administered at the direction of the law  
486 enforcement officer for the purpose of determining the amount of  
487 alcohol in the person's blood or breath or the presence of  
488 chemical substances or controlled substances at the time  
489 alleged, as shown by chemical analysis of his or her blood or  
490 urine, or by chemical or physical test of his or her breath. The  
491 failure or inability to obtain an independent test by a person  
492 does not preclude the admissibility in evidence of the test  
493 taken at the direction of the law enforcement officer. The law  
494 enforcement officer shall not interfere with the person's  
495 opportunity to obtain the independent test and shall provide the  
496 person with timely telephone access to secure the test, but the  
497 burden is on the person to arrange and secure the test at the  
498 person's own expense.

499 4. Upon the request of the person tested, full information  
500 concerning the results of the test taken at the direction of the  
501 law enforcement officer shall be made available to the person or  
502 his or her attorney. Full information is limited to the  
503 following:

504 a. The type of test administered and the procedures  
505 followed.

506 b. The time of the collection of the blood or breath  
507 sample analyzed.

508 c. The numerical results of the test indicating the  
509 alcohol content of the blood and breath.

510        d. The type and status of any permit issued by the  
511 Department of Law Enforcement which was held by the person who  
512 performed the test.

513        e. If the test was administered by means of a breath  
514 testing instrument, the date of performance of the most recent  
515 required inspection of such instrument.

516  
517 Full information does not include manuals, schematics, or  
518 software of the instrument used to test the person or any other  
519 material that is not in the actual possession of the state.  
520 Additionally, full information does not include information in  
521 the possession of the manufacturer of the test instrument.

522        5. A hospital, clinical laboratory, medical clinic, or  
523 similar medical institution or physician, certified paramedic,  
524 registered nurse, licensed practical nurse, other personnel  
525 authorized by a hospital to draw blood, or duly licensed  
526 clinical laboratory director, supervisor, technologist, or  
527 technician, or other person assisting a law enforcement officer  
528 does not incur any civil or criminal liability as a result of  
529 the withdrawal or analysis of a blood or urine specimen, or the  
530 chemical or physical test of a person's breath pursuant to  
531 accepted medical standards when requested by a law enforcement  
532 officer, regardless of whether or not the subject resisted  
533 administration of the test.

534        Section 4. Section 327.359, Florida Statutes, is amended  
535 to read:

536 327.359 Refusal to submit to testing; penalties.--Any  
 537 person who has refused to submit to a chemical or physical test  
 538 of his or her breath, blood, or urine, as described in s.  
 539 327.352, ~~and who has been previously fined for refusal to submit~~  
 540 ~~to a lawful test of his or her breath, urine, or blood,~~ and:

541 (1) Who the arresting law enforcement officer had probable  
 542 cause to believe was operating or in actual physical control of  
 543 a vessel in this state while under the influence of alcoholic  
 544 beverages, chemical substances, or controlled substances;

545 (2) Who was placed under lawful arrest for a violation of  
 546 s. 327.35 unless such test was requested pursuant to s.  
 547 327.352(1)(c);

548 (3) Who was informed that if he or she refused to submit  
 549 to such test he or she is subject to a fine of \$500;

550 (4) Who was informed that a refusal to submit to a lawful  
 551 test of his or her breath, urine, or blood, ~~if he or she has~~  
 552 ~~been previously fined for refusal to submit to a lawful test of~~  
 553 ~~his or her breath, urine, or blood,~~ is a misdemeanor; and

554 (5) Who, after having been so informed, refused to submit  
 555 to any such test when requested to do so by a law enforcement  
 556 officer or correctional officer,

557  
 558 commits the offense of refusal to submit to testing. If such  
 559 person has previously been fined for a prior refusal to submit  
 560 to a lawful test of his or her breath, urine, or blood, such  
 561 offense is a misdemeanor of the first degree, punishable and is  
 562 ~~subject to punishment~~ as provided in s. 775.082 or s. 775.083.

563 | If such person has not previously been fined for a prior refusal  
564 | to submit to a lawful test of his or her breath, urine, or  
565 | blood, such offense shall be punished by imprisonment for not  
566 | more than 6 months and by a fine of up to \$500.

567 | Section 5. This act shall take effect October 1, 2006.